

Rm. 7A114 CEA
United States Senate *2*

MEMORANDUM

February 6, 1967

To:

Assistant Legislative Counsel
Central Intelligence Agency

From:

George B. Autry
Chief Counsel and Staff Director
Subcommittee on Constitutional
Rights

The enclosed draft of the new privacy
bill is for your information.

90th CONGRESS
1st Session

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. ERVIN (for himself,

introduced the following bill, which was read twice and referred
to the Committee on _____.

A B I L L

To protect the civilian employees of the executive branch of the
United States Government in the enjoyment of their constitutional
rights and to prevent unwarranted governmental invasions of their
privacy.

- 1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled,
3 SECTION 1. It shall be unlawful for any officer of any
4 executive department or any executive agency of the United States
5 Government, or for any person acting or purporting to act under
6 his authority, to do any of the following things:
7 (a) To require, or request, or to attempt to require or
8 request, any civilian employee of the United States serving in
9 the department or agency or any person seeking employment in
10 the executive branch of the United States Government, to disclose
11 his race, religion, or national origin, or the race, religion,
12 or national origin of any of his forebears: provided, however,
13 that nothing in this subsection shall be construed to prohibit
14 inquiry concerning the citizenship of any such employee or person
15 if his citizenship is a statutory condition of his obtaining or
16 retaining his employment:
17 (b) To state or intimate, or attempt to state or intimate,
18 to any civilian employee of the United States serving in the
19 department or agency that any notice will be taken of his
20 attendance or lack of attendance at any assemblage, discussion,
21 or lecture held or called by any outside parties or organizations
22 to advise, instruct, or indoctrinate any civilian employee of the

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1 United States serving in the department or agency in respect to
2 any matter or subject other than the performance of the official/^{duties to}
3 which he is or may be assigned in the department or agency:
4 provided, however, that nothing contained in this subsection
5 shall be construed to prohibit taking notice of the participation
6 of a civilian employee in the activities of any professional
7 group or association which will promote his efficiency to perform
8 his duties to the department or agency;

9 (c) To require or request, or to attempt to require or
10 request, any civilian employee of the United States serving in
11 the department or agency to participate in any way in any
12 activities or undertakings unless such activities or undertakings
13 are related to the performance of official duties to which he
14 is or may be assigned, or to the development of skills,
15 knowledge, or abilities which qualify him for the performance
16 of such duties;

17 (d) To require or request, or to attempt to require or
18 request, any civilian employee of the United States serving in
19 the department or agency to make any report concerning any of
20 his activities or undertakings unless such activities or under-
21 takings are directly related to the performance of official duties
22 to which he is or may be assigned, or to the development of
23 skills, knowledge, or abilities which qualify him for the
24 performance of any such duties, or unless there is reason to
25 believe that the civilian employee is engaged in outside activities
26 or employment in conflict with his official duties;

27 (e) To forbid or attempt to forbid any civilian employee
28 of the United States serving in the department or agency to
29 patronize any business establishment offering goods or services
30 to the general public;

31 (f) To require or request, or to attempt to require or
32 request, any civilian employee of the United States serving in
33 the department or agency, or any person applying for employment
34 as a civilian employee in the executive branch of the United

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1 States Government, to submit to any interrogation or examination
2 or to take any psychological test which is designed to elicit
3 from him information concerning his personal relationship with
4 any person connected with him by blood or marriage, or concern-
5 ing his religious beliefs or practices, or concerning his attitude
6 or conduct with respect to sexual matters: provided, however,
7 that nothing contained in this subsection shall be construed
8 to prevent a psychiatrist from eliciting such information or
9 authorizing such tests in the diagnosis or treatment of any
10 civilian employee or applicant where such psychiatrist deems
11 such information necessary to enable him to determine whether
12 or not such individual is suffering from mental illness:
13 provided further, however, that this determination shall be
14 made in individual cases and not pursuant to general practice or
15 regulation governing the examination of employees or applicants
16 according to grade, agency, or duties;

17 (g) To require or request, or attempt to require or
18 request, any civilian employee of the United States, serving in
19 the department or agency or any person applying for employment
20 as a civilian employee in the executive branch of the United
21 States Government, to take any polygraph test designed to elicit
22 from him information concerning his personal relationship with
23 any person connected with him by blood or marriage, or concern-
24 ing his religious beliefs or practices, or concerning his
25 attitude or conduct with respect to sexual matters;

26 (h) To require or request, or attempt to require or request,
27 any civilian employee of the United States serving in the
28 department or agency to support by personal endeavor or
29 contribution of money or any other thing of value the nomination
30 or the election of any person or group of persons to public
31 office in the Government of the United States or of any state,
32 district, commonwealth, territory, or possession of the United
33 States, or to attend any meeting held to promote or support
34 the activities or undertakings of any political party of the
35 United States or of any state, district, commonwealth,
36 territory, or possession of the United States;

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1 (i) To coerce, or attempt to coerce, any employee of the
2 United States serving in the department or agency to invest his
3 earnings in bonds or other obligations or securities issued
4 by the United States or any of its departments or agencies or
5 to make donations to any institution or cause of any kind:
6 Provided, however, That nothing contained in this subsection
7 shall be construed to prohibit any officer of any executive
8 department or executive agency of the United States Government
9 or any person acting or purporting to act under his authority from
10 calling meetings and taking any action appropriate to afford
11 any civilian employee of the United States the opportunity
12 voluntarily to invest his earnings in bonds or other obligations
13 or securities issued by the United States or any of its depart-
14 ments or agencies, or voluntarily to make donations to any
15 institution or cause;

16 (j) To require, or request, or attempt to require or
17 request, any employee of the United States serving in the
18 department or agency, to disclose his assets or his liabilities
19 or his personal or domestic expenditures or those of any member
20 of his family: Provided, however, That this subsection shall
21 not apply to any civilian employee who has authority to make
22 any final determination with respect to the tax or other liability
23 of any person, corporation, or other legal entity to the United
24 States or claims which require expenditure of moneys of the
25 United States: Provided further, however, That nothing contained
26 in this subsection shall prohibit the Department of the Treasury
27 or any other executive department or agency of the United States
28 Government from requiring any civilian employee of the United
29 States to make such reports as may be necessary or appropriate for
30 the determination of his liability for taxes, tariffs, custom
31 duties, or other obligations imposed by law;

32 (k) To require or request, or attempt to require or
33 request, any civilian employee of the United States excepted
34 from the coverage of subsection (j) to disclose any items of
35 his property, income, or other assets, source of income, or

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1 liabilities, or his personal or domestic expenditures or
2 those of any member of his family or household other than
3 specific items tending to indicate a conflict of interest in
4 respect to the performance of any of the official duties to
5 which he is or may be assigned;

6 (l) To require, or request, or attempt to require or
7 request, any employee serving in the department or agency, who
8 is under investigation for misconduct to submit to interrogation
9 which could lead to disciplinary action without the presence
10 of counsel or other person of his choice, if he so requests; or

11 (m) To discharge, discipline, demote, deny promotion to,
12 relocate, reassign, or otherwise discriminate in regard to any
13 term or condition of employment of, any civilian employee of
14 the United States serving in the department or agency, or to
15 threaten to commit any of such acts, by reason of the refusal
16 or failure of such employee to submit to or comply with any
17 requirement, request, or action made unlawful by this Act or
18 by reason of the exercise by such civilian employee of any
19 right granted or secured by this Act.

20 SECTION 2. It shall be unlawful for any officer of the
21 United States Civil Service Commission, or for any person acting
22 or purporting to act under his authority to do any of the
23 following things:

24 (a) To require or request, or attempt to require or request,
25 any executive department or any executive agency of the United
26 States Government or any officer or employee serving in such
27 department or agency, to violate any of the provisions of Section 1
28 of this Act;

29 (b) To require or request, or attempt to require or request,
30 any person seeking to establish civil service status or eligibility
31 for employment in the executive branch of the United States
32 Government or any person applying for employment in the executive
33 branch of the United States Government or any civilian employee
34 of the United States serving in any department or agency of
35 the United States Government to submit to any interrogation or

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1 examination or to take any psychological test which is designed
2 to elicit from him information concerning his personal relationship
3 with any person connected with him by blood or marriage or
4 concerning his religious beliefs or practices or concerning
5 his attitude or conduct with respect to sexual matters:
6 Provided, however, That nothing contained in this subsection
7 shall be construed to prevent a psychiatrist from eliciting
8 such information or authorizing such tests in the diagnosis or
9 treatment of any civilian employee or applicant where such
10 psychiatrist deems such information necessary to enable him
11 to determine whether or not such individual is suffering from
12 mental illness: Provided further, however, That this
13 determination shall be made in individual cases and not pursuant
14 to general practice or regulation governing the examination
15 of employees or applicants according to grade, agency, or
16 duties;

17 (c) To require or request, or attempt to require or request,
18 any person seeking to establish civil service status or
19 eligibility for employment in the executive branch of the United
20 States Government or any person applying for employment in the
21 executive branch of the United States Government or any civilian
22 employee of the United States serving in any department or
23 agency in the United States Government to take any polygraph
24 test designed to elicit from him information concerning his
25 personal relationship with any person connected with him by
26 blood or marriage, or concerning his religious beliefs or
27 practices, or concerning his attitude or conduct with respect
28 to sexual matters.

29 SECTION 3. It shall be unlawful for any commissioned
30 officer, as defined in Section 101, Title 10, U.S. Code, or
31 any member of the Armed Forces acting or purporting to act
32 under his authority, to require or request, or attempt to
33 require or request, any civilian employee of the executive
34 branch of the United States under his authority or subject to
35 his supervision to perform any of the acts or submit to any
36 of the requirements made unlawful by Section 1 of this Act.

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1 SECTION 4. Any officer of any executive department or
2 any executive agency of the United States Government, or any
3 person acting or purporting to act under his authority, or any
4 commissioned officer as defined in Section 101, Title 10,
5 United States Code, or any member of the Armed Forces acting or
6 purporting to act under his authority who willfully violates or
7 willfully attempts to violate any of the provisions of sections
8 1, 2, or 3 of this Act, shall be guilty of a misdemeanor,
9 and upon conviction shall be punished by a fine not to exceed
10 \$300, or by imprisonment not to exceed thirty days, or by both
11 such fine and imprisonment.

12 SECTION 5. Whenever any officer of any executive department
13 or any executive agency of the United States Government, or
14 any person acting or purporting to act under his authority, or
15 any commissioned officer as defined in Section 101, Title 10,
16 United States Code, or any member of the Armed Forces acting
17 or purporting to act under his authority, violates or threatens
18 to violate any of the provisions of sections 1, 2, or 3 of this
19 Act, any civilian employee of the United States serving in
20 any department or agency in the United States Government or
21 any person applying for employment in the executive branch of the
22 United States Government or any person seeking to establish
23 civil service status or eligibility for employment in the
24 executive branch of the United States Government affected or
25 aggrieved by the violation or threatened violation, may bring a
26 civil action in his own behalf or in behalf of himself and
27 others similarly situated, against the offending officer or
28 person in the United States district court for the district in
29 which the violation occurs or is threatened or the district in
30 which the offending officer or person is found, or in the United
31 States district court for the District of Columbia, to prevent
32 the threatened violation or to obtain redress against the
33 consequences of the violation.

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1 Such United States district court shall have jurisdiction to
2 try and determine such civil action irrespective of the
3 actuality or amount of pecuniary injury done or threatened,
4 and without regard to whether the aggrieved party shall have
5 exhausted any administrative remedies that may be provided by
6 law, and to issue such restraining order, interlocutory in-
7 junction, permanent injunction, or mandatory injunction, or
8 enter such other judgment or decree as may be necessary or
9 appropriate to prevent the threatened violation, or to afford
10 the plaintiff and others similarly situated complete relief
11 against the consequences of the violation. With the written
12 consent of any person affected or aggrieved by a violation or
13 threatened violation of sections 1, 2, or 3 of this Act, any
14 employee organization may bring such action on behalf of such
15 person, or may intervene in such action. For the purposes of
16 this section employee organizations shall be construed to
17 include any brotherhood, council, federation, organization,
18 union, or professional association made up in whole or in
19 part of civilian employees of the United States and which has
20 as one of its purposes dealing with departments, agencies,
21 commissions, and independent agencies of the United States
22 concerning the condition and terms of employment of such
23 employees.

24 SECTION 6. (a) There is hereby established a Board on
25 Employees' Rights (hereinafter referred to as the "Board").
26 The Board shall be composed of three members, appointed by the
27 President by and with the advice and consent of the Senate. The
28 President shall designate one member as chairman. No more than
29 two members of the Board may be of the same political party.

30 (b) The term of office of each member of the Board shall
31 be five years, except that (1) of those members first appointed,
32 one shall serve for five years, one for three years, and one for one
33 year, respectively, from the date of enactment of this Act, and
34 (2) any member appointed to fill a vacancy occurring prior to
35 the expiration of the term for which his predecessor was appointed
36 shall be appointed for the remainder of such term.

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1. (c) Members of the Board shall be compensated at the
2 rate of \$75 a day for each day spent in the work of the Board,
3 and shall be paid actual travel expenses and per diem in lieu
4 of subsistence expenses when away from their usual places of
5 residence, as authorized by section 5703 of Title 5, United States
6 Code.

7 (d) Two members shall constitute a quorum for the transaction
8 of business.

9 (e) The Board may appoint and fix the compensation of such
10 officers, attorneys, and employees, and make such expenditures, as
11 may be necessary to carry out its functions.

12 (f) The Board shall make such rules and regulations as shall
13 be necessary and proper to carry out its functions.

14 (g) The Board shall have the authority and duty to receive
15 and investigate written complaints from or on behalf of any
16 person claiming to be affected or aggrieved by any violation
17 or threatened violation of this Act and to conduct a hearing
18 on each such complaint. Within ten days after the receipt of any
19 such complaint, the Board shall furnish notice of the time,
20 place, and nature of the hearing thereon to all interested parties.
21 The Board shall render its final decision with respect to any
22 complaint within thirty days after the conclusion of its hearing
23 thereon.

24 (h) Officers or representatives of any Federal employee
25 organization in any degree concerned with employment of the category
26 in which any alleged violation of this Act occurred or is threatened
27 shall be given an opportunity to participate in each hearing
28 conducted under this section, through submission of written data,
29 views, or arguments, and in the discretion of the Board, with
30 opportunity for oral presentation. Government employees called
31 upon by any party or by any Federal employee organization to
32 participate in any phase of any administrative or judicial pro-
33 ceeding under this section shall be free to do so without incurring
34 travel cost or suffering loss in leave or pay; and all such employees
35 shall be free from restraint, coercion, interference, intimidation,

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1 or reprisal in or because of their participation. Any periods
2 of time spent by Government employees during such participation
3 shall be held and considered to be Federal employment for all
4 purposes.

5 (i) Insofar as consistent with the purposes of this section,
6 the provisions of subchapter II of chapter 5 of Title 5, United
7 States Code, relating to the furnishing of notice and manner
8 of conducting agency hearings, shall be applicable to hearings
9 conducted by the Board under this section.

10 (j) If the Board shall determine after hearing that a
11 violation of this Act has not occurred or is not threatened,
12 the Board shall state its determination and notify all interested
13 parties of such determination. Each such determination shall
14 constitute a final decision of the Board for purposes of
15 judicial review.

16 (k) If the Board shall determine that any violation of
17 this Act has been committed or threatened by any civilian
18 officer or employee of the United States, the Board shall
19 immediately (1) issue and cause to be served on such officer or
20 employee an order requiring such officer or employee to cease and
21 desist from the unlawful act or practice which constitutes a
22 violation, (2) endeavor to eliminate any such unlawful act or practice
23 by informal methods of conference, conciliation, and persuasion,
24 and (3) may (A) in the case of the first offense by any civilian
25 officer or employee of the United States, other than any
26 officer appointed by the President, by and with the advice and
27 consent of the Senate, issue an official reprimand against such
28 officer or employee or order the suspension without pay of such
29 officer or employee from the position or office held by him
30 for a period of not to exceed fifteen days; and in the case of a
31 second or subsequent

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1 offense by any such officer or employee, order the suspension
2 without pay of such officer or employee from the position or
3 office held by him for a period of not to exceed thirty days or
4 order the removal of such officer or employee from such position
5 or office; and (B) in the case of any offense by any officer
6 appointed by the President, by and with the advice and consent
7 of the Senate, transmit a report concerning such violation to
8 the President and the Congress.

9 (1) If the Board shall determine that any violation of
10 this Act has been committed or threatened by any officer of any of
11 the Armed Forces of the United States or any person purporting to act
12 under authority conferred by such officer, the Board shall (1)
13 submit a report thereon to the President, the Congress, and
14 the Secretary of the military department concerned, (2) endeavor
15 to eliminate any unlawful act or practice which constitutes such
16 a violation by informal methods of conference, conciliation,
17 and persuasion, and (3) refer its determination and the record
18 in the case to any person authorized to sign charges and
19 specifications under section 830 (Article 30) of Title 10,
20 United States Code. Thereupon such person shall take immediate
21 steps to dispose of the matter under chapter 47 of Title 10,
22 United States Code (Uniform Code of Military Justice.)

23 (m) Any party aggrieved by any final determination or
24 order of the Board may institute, in the district court of the
25 United States for the judicial district wherein the violation
26 or threatened violation of this Act occurred, or in the United
27 States District Court for the District of Columbia, a civil
28 action for the review of such determination or order. In any
29 such action, the court shall have jurisdiction to (1) affirm,
30 modify, or set aside any determination or order made by the
31 Board which is under review, or (2) require the Board to make
32 any determination or order which it is authorized to make under
33 subsection (j), but which it has refused to make. The reviewing
34 court shall set aside any finding, conclusion, determination,
35 or order of the Board as to which complaint is made which is un-
36 supported by substantial evidence on the record considered as a
37 whole.

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1 (n) The Board shall submit, not later than March 31 of
2 each year, to the Senate and House of Representatives,
3 respectively, a report on its activities under this section
4 during the immediately preceding calendar year, including a
5 statement concerning the nature of all complaints filed with
6 it, its determinations and orders resulting from hearings
7 thereon, and the names of all officers or employees of the
8 United States with respect to whom any penalties have been
9 imposed under this section.

10 (o) There are authorized to be appropriated sums necessary,
11 not in excess of \$100,000, to carry out the provisions of
12 this section.

13 SECTION 7. This Act shall not be applicable to the
14 Federal Bureau of Investigation.

15 SECTION 8. If any provision of this Act or the application
16 of any provision to any person or circumstance shall be held
17 invalid, the remainder of this Act or the application of such
18 provision to persons or circumstances other than those as
19 to which it is held invalid, shall not be affected.